## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA ALBANY DIVISION

:

DEXTER G. LEWIS,

:

Plaintiff,

CIVIL ACTION FILE

VS.

1:04-cv-40(RLH)

RICKY HANES, ABL Management Inc., Food Service Coordinator, DAN HAGGERTY<sup>1</sup>, Major of Administration, JAMIL SABA, Sheriff, Dougherty Co.,

:

Defendants.

## ORDER

This is a § 1983 action brought by an inmate at the Dougherty County Jail who complains that the food he is given at the jail is inadequate in quantity and nutritional quality and that as a result of this he has suffered a significant weight loss. All parties have heretofore consented to the undersigned United States Magistrate Judge conducting any and all proceedings in connection with this action including but not limited to, the trial of said case and the ordering of the entry of judgment herein.

Presently pending is the defendants' second pre-answer motion to dismiss plaintiff's complaint.<sup>2</sup> Defendants previously filed another motion to dismiss alleging that the plaintiff should not be allowed to proceed in this matter *in forma pauperis* due to the three strikes provision of the Prison Litigation Reform Act. The court denied that motion as the plaintiff did not have three strikes at the time he filed this action. In responding to the first motion to dismiss

<sup>&</sup>lt;sup>1</sup>Incorrectly identified by plaintiff as Dane Hagger

<sup>&</sup>lt;sup>2</sup>Defendants have now filed their answer.

the plaintiff stated, "[i]f I have to pay the \$150.00 filing fee for case 1:04-cv-54-2 and !:04-cv-40-1 with the help of the Lord and my family, so I will not have to proceed in forma pauperis then the 3 strike provision of the 28 U.S.C. § 1915 will not apply, then what will the defendants do then? If this case, I ask the court to notify me in writing and I will pay the total amount and not let the amount be deducted from my prison account." The defendants interpreted the above quote to mean that the plaintiff stated he had the money to pay the filing fee, therefore his complaint should be dismissed which he could re-file upon payment of the full filing fee. These are the grounds set out in the pending motion to dismiss. In responding to this motion to dismiss the plaintiff explained that if ordered to do so by the court, with the help of the Lord and his family he would get the filing fee paid. Plaintiff also stated in his response to this pending motion that he presently had a negative balance of \$372.96 in his account at the Dougherty County Jail. It must also be noted that when the plaintiff filed his complaint and motion to

Although the plaintiff must be considered to be a frequent filer who now clearly has three strikes against him, the court can not, under the grounds alleged by defendants, grant the motion to dismiss the complaint. At the time the motion was filed plaintiff had a negative balance of \$288.58 in his jail account. Accordingly the motion to dismiss is hereby **DENIED.** 

proceed in forma pauperis the records submitted by the Dougherty County Jail showed him to

SO ORDERED, this 25<sup>th</sup> day of August 2005.

have a negative balance of \$288.58 at that time.

/s/ Richard L. Hodge RICHARD L. HODGE UNITED STATES MAGISTRATE JUDGE